
UNITED STATES OF AMERICA

v.

DAVID MATTHEW HICKS

)
)
) PROSECUTION RESPONSE TO
) DEFENSE BRIEF ON STANDARD FOR
) GOOD CAUSE CHALLENGE OF
) COMMISSION MEMBERS
)
)

8 September 2004

1. During the hearing held on 25 August 2004, the Presiding Officer directed that the Defense submit any matters they wish to have considered by the Appointing Authority regarding challenges by 7 September 2004. The Defense has done so, filing its “Brief on Standard for Good Cause Challenge of Commission Members” on 7 September 2004. The Presiding Officer directed that the Prosecution forward to the Appointing Authority its response by 10 September 2004. (R. at 102 – 104). Thus, this Prosecution response is filed within the timeframe and guidance provided by the Presiding Officer.

2. On 7 September 2004, the Prosecution submitted the following proposed standard for when a challenge for cause should be granted:

A member shall be disqualified when there is good cause to believe that the member cannot provide the accused a full and fair trial, or the member’s impartiality might reasonably be questioned based upon articulable facts.

3. Based upon the Prosecution’s proposed standard as well as the Defense Brief, the Prosecution in the above-captioned case does not object to the Defense challenges for cause of Colonel **NAME REDACTED**, Lieutenant Colonel **NAME REDACTD**, and Lieutenant Colonel **NAME REDACTED**. The Prosecution requests that the Defense challenge for cause of Colonel **NAME REDACTED** be denied. Regarding Colonel Brownback, the Prosecution requests that the Appointing Authority apply the proposed Prosecution standard and closely evaluate the facts

elicited regarding Colonel Brownback to determine whether the Defense challenge of him should be granted.

//Signed//

ROBERT L. SWANN
Colonel, U.S. Army
Chief Prosecutor

CERTIFICATE OF SERVICE

I certify that the above Prosecution response was served in person on Defense Counsel for the Accused this ____ day of September 2004.

//Signed//

ROBERT L. SWANN
Colonel, U.S. Army
Chief Prosecutor